

No. 12828

In the United States Court of Appeals
for the Ninth Circuit

ALICE McCOURT LAMM, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

ON PETITION FOR REVIEW OF THE DECISION OF THE TAX
COURT OF THE UNITED STATES

BRIEF FOR THE RESPONDENT

THERON LAMAR CAUDLE,
Assistant Attorney General.

ELLIS N. SLACK,
A. F. PRESCOTT,
MORTON K. ROTHSCHILD,
Special Assistants to the Attorney General.

FILED

MAY 31 1951

PAUL T. PHIBBS

CLERK

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	3
Statement	3
Summary of argument	7

Argument:

The thirteen promissory notes, in which the taxpayer had an undivided fractional interest, were not in registered form within the meaning of Section 117 (f) of the Internal Revenue Code	8
Conclusion	18

CITATIONS

Cases:

<i>Avery v. Commissioner</i> , 111 F. 2d 19.....	13
<i>Benwell v. Newark</i> , 55 N. J. Eq. 260.....	13, 18
<i>Commissioner v. Caulkins</i> , 144 F. 2d 482.....	15
<i>Fairbanks v. United States</i> , 306 U. S. 436.....	8
<i>First Nat. Bank v. Mayor and City Council</i> , 27 F. Supp. 444, affirmed, 108 F. 2d 600.....	13, 18
<i>Gerard v. Helvering</i> , 120 F. 2d 235.....	12
<i>Lurie v. Commissioner</i> , 4 T.C. 1065.....	14
<i>Lurie v. Commissioner</i> , 156 F. 2d 436.....	14
<i>Novoprutsky v. Morris Plan Co.</i> , 319 Pa. 97.....	13
<i>Read v. Lehigh Valley R. R. Co.</i> , 284 N. Y. 435.....	13
<i>Rieger v. Commissioner</i> , 139 F. 2d 618.....	15

Statute:

Internal Revenue Code, Sec. 117 (26 U.S.C. 1946 ed., Sec. 117)	3
--	---

**In the United States Court of Appeals
for the Ninth Circuit**

No. 12828

ALICE McCOURT LAMM, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

*ON PETITION FOR REVIEW OF THE DECISION OF THE TAX
COURT OF THE UNITED STATES*

BRIEF FOR THE RESPONDENT

OPINION BELOW

The only previous opinion in the present case is that of the Tax Court (R. 131-145), which is reported in 15 T. C. 305.

JURISDICTION

This petition for review (R. 147-152) involves federal income and victory taxes for the year 1943. The taxpayer filed her income and victory tax return for the year 1943 with the Collector of Internal Revenue for the District of Oregon. (R. 20, 133, 134.) On November 26, 1948, the Commissioner mailed to the taxpayer a notice of deficiency in income tax in the amount of \$4,246.73. (R. 11-14.) Within 90 days thereafter,

and on February 7, 1949, the taxpayer filed a petition with the Tax Court for a redetermination of the deficiency under the provisions of Section 272 (a) (1) of the Internal Revenue Code. (R. 3, 5-14.) The decision of the Tax Court that there was a deficiency in income and victory taxes for the year 1943 in the amount of \$4,246.73 was entered on September 26, 1950. (R. 146.) The case is brought to this Court by a petition for review filed on December 26, 1950 (R. 4, 147-152), pursuant to the provisions of Section 1141 (a) of the Internal Revenue Code, as amended by Section 36 of the Act of June 25, 1948.

This Court entered an order on January 24, 1951, that the decisions in fourteen related cases which had been consolidated with the instant case for trial before the Tax Court (R. 132) should be controlled by the decision in this case (R. 154-156).

QUESTION PRESENTED

A group of individuals, including the taxpayer, purchased at a substantial discount some promissory notes which were then past due. Inasmuch as the face amounts of the notes did not correspond with the amounts contributed by the individuals, the latter entered into a written agreement with a trust company whereby the notes were endorsed and delivered to the trust company which, in consideration of a fee, agreed to collect the interest and principal on the notes and to pay the proper proportion to each member of the group. The maker of the notes was not a party to the agreement; there was no notice on the face of each note that it might be registered, nor was there any space for the name of the registered owner. When the notes were redeemed, the taxpayer realized a gain which she treated on her tax return as a capital gain. The

Commissioner, on the other hand, determined that it was ordinary income. The question presented is:

Whether the notes were “in registered form” so that their retirement was controlled by Section 117 (f) of the Internal Revenue Code.

STATUTE INVOLVED

Internal Revenue Code:

SEC. 117. CAPITAL GAINS AND LOSSES.—

* * * *

(f) *Retirement of Bonds, Etc.*—For the purpose of this chapter, amounts received by the holder upon the retirement of bonds, debentures, notes, or certificates or other evidences of indebtedness issued by any corporation (including those issued by a government or political subdivision thereof), with interest coupons or in registered form, shall be considered as amounts received in exchange therefor.

* * * *

(26 U. S. C. 1946 ed., Sec. 117.)

STATEMENT

The facts, some of which were stipulated (R. 19-65) and incorporated in the findings of fact (R. 134), are substantially as follows (R. 23-28):

On May 6, 1930, and on September 5, 1930, respectively, Lamm Lumber Company, a corporation, issued two promissory notes in the respective principal sums of \$150,000 and \$250,000, payable to the order of Consolidated Securities Company (hereinafter referred to as Consolidated) in consideration of loans from the latter in those two sums. Each of the notes was secured by a mortgage on a certain railroad owned by Lamm Lumber Company, and as part of the same trans-

actions, Lamm Lumber Company gave options to Consolidated to purchase the railroad in preference to any other purchaser on the same terms. On May 26, 1930, and September 30, 1930, Consolidated executed respective declarations of trust that it held the notes, mortgages and options for the benefit of Southern Pacific Land Company (hereinafter called Land Company), and at all times prior to July 1, 1941, Land Company was the beneficial owner of the notes, mortgages and options. (R. 23-24.)

From March 5, 1932, to September 5, 1934, various additional notes were issued by Lamm Lumber Company to Consolidated representing unpaid interest on the corporate indebtedness. On December 24, 1936, Lamm Lumber Company and Consolidated entered into a supplementary agreement reciting the indebtedness and mortgages, compromising the unpaid interest as to its amount, funding the interest and accruals to January 1, 1938, by adding them to the principal, restating the new principal at January 1, 1938, as \$497,845, and stating interest from January 1, 1938, to be 3%. Lamm Lumber Company, the obligor, covenanted to make minimum payments of \$15,000 a year until December 31, 1941, and \$35,000 a year thereafter, the payments to be first applied on interest and then on principal. (R. 24.)

On February 8, 1940, Consolidated endorsed to the Anglo California National Bank of San Francisco (hereinafter called Anglo) all of the promissory notes, without recourse, and assigned to Anglo its rights as mortgagee. (R. 24-25.)

At various times from February 10, 1938, to June 11, 1941, Lamm Lumber Company made payments on the debt in accordance with the agreement of December 24, 1936, so that as of June 12, 1941, the sum owing by Lamm Lumber Company to Land Company was \$411,-

264.99. All of the notes were then on their face past due. (R. 25.)

For some time prior to July 1, 1941, Land Company had been desirous of liquidating its lumber interests in northern California and Oregon and let it be known that it would be willing to sell its interest in the Lamin Lumber Company notes at a substantial discount. In order to avail themselves of the investment opportunity thus presented, certain individuals, including the taxpayer, each on his or her own behalf, offered to purchase at the proffered discount undivided fractional interests in the notes, making in total 100% of the ownership of the notes. These offers were presented to Southern Pacific Company (parent of Land Company) on behalf of Land Company as an offer to purchase the total ownership of the notes for a sum amounting to 50% of the balance of the principal of the loan plus the interest currently due at the time of the completion of the purchase. This offer was subsequently accepted by Southern Pacific Company on behalf of Land Company, and on July 1, 1941, the individuals, including the taxpayer, paid over to Land Company the various amounts agreed to be paid by them for the purchase of the undivided fractional interests and totaling the sum of \$206,388.55, and the beneficial ownership of the notes and mortgages was transferred from Land Company to the individuals in proportion of their undivided fractional interests. (R. 25-26.)

The individuals, as beneficial owners of the undivided fractional interests in the notes by virtue of the purchase, entered into a written agreement called Instructions and Agreement, dated July 15, 1941, with American Trust Company (hereinafter referred to as Trust Company). In executing the agreement each of the individuals signed an individual counterpart thereof, stating his or her percentage interest in the notes. Con-

temporarily with the delivery of the Instructions and Agreement to Trust Company, the individuals delivered to Trust Company a list of the names, addresses, amounts invested, and percentage interests of the individuals. (R. 26.)

Pursuant to the Instructions and Agreement, the notes were endorsed, and the mortgages assigned, to Trust Company to hold and keep in its possession in accordance with the instructions contained in the Instructions and Agreement. (R. 26-27.)

In accordance with the Instructions and Agreement (Ex. 2-B; R. 55-62) Trust Company duly remitted collections of interest and principal paid to it by Lamm Lumber Company to those owners shown to be entitled thereto in accordance with their ownership interests. During this period, none of the individuals sold or exchanged his undivided fractional interests in the notes. In several instances, however, certain owners changed their addresses, informing Trust Company of the changes, and Trust Company thereupon mailed its remittances to the new addresses. (R. 27.)

The Trust Company's charges for its services in collecting and remitting interest and principal payments and in maintaining a record of ownership were shared by the participating owners of record and by Lamm Lumber Company in the following manner: As agreed in the Instructions and Agreement, Trust Company charged the sum of \$500 as an acceptance fee, an annual fee of \$100 plus $\frac{1}{10}$ of 1% of the unpaid balance of the obligation at the beginning of each year, and \$250 as a closing fee, plus reimbursement for out-of-pocket expenses. Of these charges Lamm Lumber Company agreed by letter dated August 26, 1941, to Trust Company to pay sums at the rate of \$250 per annum which were credited against the foregoing total charges. (R. 27.)

On December 7, 1943, the notes were retired by payment of the balance of the principal and interest due thereon. During the year 1943 the taxpayer realized a gain in the amount of \$7,951.76 on the retirement of the notes. (R. 13, 28.)

The above-mentioned gain of the taxpayer was reported in her income and victory tax return for the calendar year 1943 as a long-term capital gain, of which 50% was reported as income. (R. 13, 28.) The Commissioner determined a deficiency of \$4,246.73 on the ground that the notes were not at the date of retirement in registered form within the meaning of Section 117 (f) of the Internal Revenue Code and therefore the gain was not taxable as a long-term capital gain but was taxable as ordinary income. (R. 12-13, 28.) The taxpayer, along with most of the other owners of undivided interests in the notes, appealed to the Tax Court, which, in a decision reviewed by the court, held that the notes were not in registered form within the meaning of Section 117 (f) of the Internal Revenue Code at any time, either before or after the taxpayer acquired her interest in them. (R. 3, 145.)

SUMMARY OF ARGUMENT

The sole question in this case is whether the thirteen promissory notes were in registered form within the meaning of Section 117 (f) of the Internal Revenue Code, and the answer may best be found by examining the notes themselves. Such an examination shows that they do not have on their face a notice to the holder that they might be registered, and that they do not have on either face or back the name of the registered owner. Therefore they are not in registered form.

While there are no authorities directly in point, there is at least one analogous case decided by the Second Circuit which supports the decision of the court below.

The case decided by this Court upon which the taxpayer relies differs substantially from the present case. In fact, in that case there was no dispute that the notes were in registered form; it was merely a question of whether the statute required them to be in registered form for a period of 18 months. The taxpayer relies strongly upon the contract between the Trust Company and the group of individuals, including the taxpayer, who purchased the notes. Since the face amounts of the various notes did not correspond with the amounts contributed by the various members of the group, the obvious purpose of the agreement was to arrange for the collection of interest and principal of the notes and for the payment of the proportionate amounts to the various members of the group. The agreement clearly shows that the Trust Company was the agent for the note holders and not for the maker, and the Tax Court so found.

ARGUMENT

The Thirteen Promissory Notes, in Which the Taxpayer Had an Undivided Fractional Interest, Were Not in Registered Form Within the Meaning of Section 117 (f) of the Internal Revenue Code

The question in this case is whether the gain which the taxpayer realized upon the retirement of the notes in question, in which she had an undivided fractional interest, was capital gain or ordinary income. The retirement of the notes is not an exchange (*Fairbanks v. United States*, 306 U. S. 436) of property unless the notes may be said to fall within the terms of Section 117 (f) of the Internal Revenue Code, *supra*, which provides in part that for the purpose of the income tax, amounts received by the holder upon the retirement of notes "in registered form" shall be considered as amounts received in exchange therefor. Therefore, the only question in this case is whether the notes were in registered form under the statute.

The thirteen promissory notes involved in this case (R. 29-48, 56) may be divided into two groups: (a) the two principal notes aggregating \$400,000, face value (R. 29-33), which were past due when the group, including the taxpayer, acquired them on July 1, 1941 (R. 25, 26), and (b) the interest notes, aggregating \$65,875, face value (R. 33-48), which were demand notes.

An example of the first group follows (R. 29-31):

~~EXHIBIT 1A~~

\$150,000.00

Modoc Point, Oregon, May 6th, 1930.

For value received, Lamm Lumber Company, an Oregon corporation, promises to pay to Consolidated Securities Company, a California corporation, or order, at the office of The Anglo & London Paris National Bank of San Francisco, in the City and County of San Francisco, State of California, One Hundred and Fifty Thousand (150,000) Dollars, in Gold Coin of the United States of America, of the present standard value, with interest thereon in like Gold Coin at the rate of five and one-half ($5\frac{1}{2}$) per centum per annum from date until paid. The interest herein provided for shall be paid semi-annually from date hereof, and said principal of this note shall be payable in installments of not less than Fifty Thousand (50,000) Dollars. The first of said installments is due and payable May 1, 1934, and a like installment at the end of each and every one year period thereafter until the whole of said principal sum of One Hundred and Fifty Thousand (150,000) Dollars shall have been fully paid. If any of said payments of either principal or interest is not paid when due, the whole of said principal sum and interest shall become immediately due and collectible at the option of the holder of this note. And in case suit or action is instituted to collect this note, or any portion thereof, or any interest thereon, the said Lamm Lumber Company promises to pay such additional sum as the court may adjudge reasonable as attorneys' fees in said suit or action. The entire unpaid principal, or any portion thereof, may, at the option of Lamm Lumber Company, be paid at any time before maturity.

LAMM LUMBER COMPANY,
By W. E. LAMM,

President.

Attest:

J. S. KENT,

[SEAL]

Secretary.

May 26, 1930,

Interest in the amount of \$452.00 on this note is waived due to delayed payment of principal by Consolidated Securities Company; May 6, 1930, to May 26, 1930, twenty days, at $5\frac{1}{2}\%$.

THE ANGLO & LONDON PARIS NATIONAL
BANK OF SAN FRANCISCO,
R. R. ZELLYCK.

Interest Payments.

11/6/30—\$36.73.

5/6/31— 41.25.

11/6/31— 41.25.

February 23, 1940

Without recourse, pay to the order of The Anglo California National Bank of San Francisco.

CONSOLIDATED SECURITIES COMPANY,
By H. L. MACHEN,
Vice President,

[SEAL] By I. M. OTTO,
Assistant Secretary.

July 9, 1941

Without recourse, pay to the order of The American Trust Company.

THE ANGLO CALIFORNIA NATIONAL
BANK OF SAN FRANCISCO,
By FRED V. VOLLMER,
Vice President,

By R. A. HOLMBERG,
Ass't Sect'y.

An example of the second group (the demand notes) follows (R. 33-34):

March 5th, 1932

\$6,875.00

For value received, Lamm Lumber Company, an Oregon corporation, promises to pay, on demand, to Consolidated Securities Company, a California corporation, or order, at The Anglo California National Bank of San Francisco, San Francisco, California, Six Thousand Eight Hundred and Seventy-five (6,875.00) Dollars, in lawful money

of the United States of America, with interest in like money at the rate of $5\frac{1}{2}$ per cent per annum from date until paid.

In case suit or action is instituted to collect this note, or any portion thereof, or interest thereon, said Lamm Lumber Company promises to pay such additional sum as the court may adjudge reasonable attorneys' fees in said suit or action.

LAMM LUMBER COMPANY,
By W. E. LAMM,
President.

Attest:

J. S. KENT,
Its Secretary.

February 23, 1940

Without recourse, pay to the order of The Anglo California National Bank of San Francisco

CONSOLIDATED SECURITIES COMPANY,
By H. L. MACHEN,
Vice President.

By I. M. OTTO,
Assistant Secretary.

July 9, 1941

Without recourse, pay to the order of American Trust Company.

THE ANGLO CALIFORNIA NATIONAL
BANK OF SAN FRANCISCO,
By FRED V. VOLLMER,
Vice President.

By R. A. HOLMBERG,
Assistant Secretary.

It is obvious that these notes are not in registered form because they do not have on their face a notice to the holder that they might be registered, and they do not have on their face or back the name of the registered owner. See *Gerard v. Helvering*, 120 F. 2d 235 (C.A. 2d). In that case where the taxpayer lent a corporation a sum of money, taking a bond and mortgage in the usual form, and no provision was made for registering

any transfer of the bond, and there was no stipulation that the bond could be transferred only by registry or other entry upon the books of the mortgagor, the court held that the bond was not in registered form. The court said (p. 236):

The purpose is to protect the holder by making invalid unregistered transfers, and the bond always so provides upon its face. * * *

In the present case if the notes had been stolen from the Trust Company and subsequently had come into the hands of a *bona fide* purchaser, there is no question but that he could have recovered from the maker, Lamm Lumber Company. On the other hand, if the notes had in fact been in registered form (*Benwell v. Newark*, 55 N. J. Eq. 260, 263, 36 Atl. 668, 669), the maker of the notes would have had a good defense against a *bona fide* purchaser who did not have a formal assignment from the registered owner. See *Read v. Lehigh Valley R. R. Co.*, 284 N. Y. 435, 31 N.E. 2d 891; *First Nat. Bank v. Mayor and City Council*, 27 F. Supp. 444 (Md.), affirmed, 108 F. 2d 600 (C.A. 4th). Once the notes were put in registered form, the maker need recognize only the registered owner, or his assignee, even if the notes were lost. See *Novoprutsky v. Morris Plan Co.*, 319 Pa. 97, 179 Atl. 218.

In *Avery v. Commissioner*, 111 F. 2d 19, decided by this Court, which involved the question whether a gain realized upon the maturity of a ten-year endowment policy was a capital gain or ordinary income, this Court pointed out the limitations of Section 117 (f) of the Revenue Act of 1934, c. 277, 48 Stat. 680 (which corresponds to Section 117 (f) of the Internal Revenue Code) and said (p. 23):

However this may be, it should be noted that Section 117 (f) is not all-inclusive. For example, it is limited to evidence of indebtedness of a *corporation*, and further limited to evidence of indebtedness of a corporation "*with interest coupons or in registered form.*" (Emphasis supplied.)

In *Lurie v. Commissioner*, 156 F. 2d 436, decided by this Court, there was no dispute between the parties that the notes were in registered form at the time they were retired; the only question was whether, in order to get the benefit of treating the gain on retirement as a capital gain under Section 117 (f) of the Revenue Act of 1938, c. 289, 52 Stat. 447, it was necessary for the notes to be in registered form for a period of 18 months. On the face of each note was printed the following (*Lurie v. Commissioner*, 4 T.C. 1065, 1066):

Notice to Holder: This note may be registered as provided on the back hereof * * *.

and on the back thereof:

This note may be registered in the holder's name upon a register to be maintained by the Company at its office in San Francisco, California. Such registration shall be noted on this note by the company, after which no transfer hereof shall be valid unless made on said register and noted on this note. The Company may deem and treat the person in whose name this note is from time to time registered as the absolute owner hereof for the purpose of receiving payments of principal and interest due hereon and for all other purposes.

(Registration)

Notice to Holder: Do not write on this note. Consult the Company for method of transferring registration.

Date of Registry _____.

In Whose Name Registered _____.

Register

Hilton Hotel Company of California,

By _____,

Authorized Officer.

In the present case, to repeat what was said above, there is no notice to the holder upon the face or back of the note that the note may be registered, nor is there any space for the name of the registered owner, the date of registry or the name of the registrar. In this respect the notes here differ materially from those in the *Lurie* case, *supra*, and also from Petitioner's Exhibit 8,¹ the *specimen* bond, which states on its face that it may be registered and has a space of about 8¾ inches by 7 inches in which the names of the respective registered owners and the respective dates of registry may be shown.

In *Rieger v. Commissioner*, 139 F. 2d 618 (C.A. 6th), relied upon by the taxpayer (Br. 23), it appeared that there was printed on the face of the certificate a provision that no assignment would be recognized in payment of dividends unless notice was given to the Superintendent of Banks of Ohio and entered upon his books before such dividends were declared, and there was on the back of the certificate an assignment form similar to that generally used in connection with the transfer of stock certificates, under which was space for the acceptance of the assignment by the Superintendent of Banks of Ohio. There were no similar provisions printed on the notes in this case. In *Commissioner v. Caulkins*, 144 F. 2d 482 (C.A. 6th) (Pet. Br. 23), there was no dispute that the certificate was in registered form. The remaining cases cited by the taxpayer (Br. 23) are decisions of the Tax Court which differ substantially from this case. However, if they are con-

¹ Upon stipulation of the parties and order of this Court, Petitioner's Exhibit 8 was not printed, but may be considered in the form certified by the Clerk of the Tax Court. (R. 162-163.) It may be noted that Petitioner's Exhibit 8 is not in any way directly involved in this case and is not a specimen of an obligation of the maker of the notes in this case. Moreover, it has coupons attached, which is not true of any of the notes in this case. (R. 29-48.)

sidered to be similar, they were in effect overruled by the decision of the same tribunal in the present case.

The principal evidence upon which the taxpayer relies to show that the notes were in registered form is the contract or agreement between the Trust Company and each member of the group who purchased the notes in 1941. (R. 55-62.) The face amounts of the various notes (R. 56) did not correspond with the amounts contributed by the various members of the group (R. 63-64). The obvious purpose of the agreement was to arrange for the collection of interest and principal of the notes and for the payment of proportionate amounts to the various members of the group. It provides in part (R. 57-58):

The undersigned, joint owners of said obligation in the fractional interests indicate below have caused the above described notes to be endorsed and delivered to you, and have caused The Anglo-California National Bank of San Francisco to execute and deliver to you an "Assignment of Mortgages" dated July 9, 1941, *to be held by you as our Agent* and subject to the provisions of this Agreement. The undersigned have caused an unrecorded agreement covering "Option Rights" dated May 6, 1930, between Lamm Lumber Company and Consolidated Securities Company to be assigned to you likewise *to be held by you as our Agent* and subject to the provisions of this Agreement.

* * * * *

You are to receive for the account of the undersigned and *as their Agent* such payments on account of interest and principal as may be made to you from time to time by Lamm Lumber Company. * * *. On or within a reasonable time after the 10th day of each September, December, March and June, you are to remit to each of the undersigned a check for his share of the interest payments and

separate check for his share of the principal payments, less your charges.

* * * * *

[Italics supplied.]

These provisions support the conclusion of the Tax Court that the Trust Company was an agent of the group, including the taxpayer, which purchased the notes at a discount, and not an agent of the Lamm Lumber Company. (R. 144-145.) Lamm Lumber Company was not a party to the agreement with the Trust Company, and the only relationship between the two was that it offered to contribute \$250 per year to the fees for the services rendered by the Trust Company. There is nothing to show that this contribution was a legal obligation; it was purely vountary as far as the record shows. The taxpayer argues that the Trust Company was acting, to some extent, as agent of the Lamm Lumber Company because the Trust Company was instructed by the Lamm Lumber Company to compute interest on the basis of 365 days per year instead of 360 days per year. (Br. 26.) The letter in question (R. 64-65) shows that the Lamm Lumber Company made a suggestion and asked the Trust Company for a reply; the last line of the letter reads, "May we hear from you on these details?" The letter sounds more like a friendly suggestion than an instruction by a principal.

The taxpayer argues that under Section 117 (f) it is not necessary that the security be placed in registered form *by the debtor corporation*. (Br. 24-26.) We assume that when Congress used the words "in registered form" in the statute, it intended that the ordinary meaning of that term should apply. The ordinary meaning of that term is that the evidence of indebtedness "can be transferred only by an entry on the books

of the debtor corporation". *Benwell v. Newark*, 55 N. J. Eq. 260, 263, 36 Atl. 668, 669. See also *First Nat. Bank v. Mayor and City Council*, 27 F. Supp. 444, 450 (Md.), affirmed, 108 F. 2d 600 (C.A. 4th).

The taxpayer also argues that the purpose of Section 117 (f) was to differentiate between securities held for investment purposes and those which are held for short-term speculation or trading, and to treat gains from the former as capital gains. (Br. 13.) Since eleven of the notes in this case were demand notes and the other two were past due when the group, including the taxpayer, acquired them (R. 25, 56), they could have been paid immediately; that does not tend to show a long-term investment on the part of the group, including the taxpayer, which purchased the notes.

The Tax Court was clearly correct in holding that the notes here were not in registered form within the meaning of the statute. It may be noted that the decision was reviewed by the court. (R. 145.)

CONCLUSION

The decision of the Tax Court is correct and should therefore be affirmed.

Respectfully submitted,

THERON LAMAR CAUDLE,
Assistant Attorney General.

ELLIS N. SLACK,

A. F. PRESCOTT,

MORTON K. ROTHSCHILD,

Special Assistants to the Attorney General.

MAY, 1951.